

1 Edward M. Mastrangelo, Esq. (SBN 83720)
2 Nicholas J. Mastrangelo, Esq. (SBN 160495)
MASTRANGELO LAW OFFICES
A Professional Corporation
3 Two Theatre Square, Suite 234
Orinda, California 94563
4 Telephone: (925) 258-0500
Facsimile: (925) 254-0550
5 ed@mlolawyer.com
nick@mlolawyer.com

6 Attorneys for Plaintiffs
7 WENDY STEVENS, individually and as Guardian ad Litem for K.S., a minor

8

9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11

12 WENDY STEVENS, individually and as
Guardian ad Litem for K.S., a minor

Case No.:

13

Plaintiff,

**COMPLAINT FOR
1. NEGLIGENCE**

14

vs.

15

UNITED STATES OF AMERICA,

16

Defendant.

17

18

Complaint for Damages Under the Federal Tort Claims Act

19 Plaintiffs WENDY STEVENS, individually and as Guardian ad Litem for K.S., a minor, by
20 counsel, hereby complain and allege as follows:

21

Introduction

22

23 1. This is a civil action against the Defendant United States of America under the Federal
Tort Claims Act, 28 U.S.C. §2671 and 28 U.S.C. §1346(b), in connection with a motor vehicle
24 accident that occurred on November 28, 2012 in the County of Contra Costa, State of California, in
25 which 2007 Ford Expedition owned by U.S. Department of Homeland Security Immigration and
26 Customs Enforcement and driven by Theresa Faga Jang collided with the side of the 2011 Ford Focus
27 operated by Wendy Stevens. Minor plaintiff K.S. was a passenger in the car at the time. The
28

Defendant's negligence was a substantial contributing factor in causing Plaintiffs' injuries.

2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act, 28 U.S.C §1346(b), for monetary damages as compensation for personal injuries caused by Defendant's negligence.

3. On October 31, 2014, Plaintiffs submitted their completed Claims for Damage, Injury, or Death to U.S. Department of Homeland Security Immigration and Customs Enforcement , fully complying with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act. Said claim was received by the U.S. Department of Homeland Security Immigration and Customs Enforcement on November 12, 2014. The completed Standard Form 95s for Wendy Stevens and K.S. along with receipt of delivery from the United States Postal Service are attached hereto as Exhibit 1.

4. Plaintiffs are now filing this Complaint pursuant to 28 U.S.C. §2401(b) and 28 U.S.C. §2675(a) upon failure of the Department of Homeland Security to make a final disposition of the claim within the six months after it was filed. The letters of denial dated March 31, 2017 from David L. Meek of the U.S. Department of Homeland Security Immigration and Customs Enforcement for Wendy Stevens and K.S. are attached hereto as Exhibit 2.

5. This complaint for damages is being timely filed, in that Plaintiffs timely served notice of this claim on the U.S. Department of Homeland Security Immigration and Customs Enforcement less than two years after the incident forming the basis of this suit.

Parties, Jurisdiction, and Venue

6. Plaintiffs are, and at all times relevant hereto were, residents of Contra Costa County, California.

7. U.S. Department of Homeland Security Immigration and Customs Enforcement, is an agency of the United States Federal Government responsibility for immigration and customs enforcement in the United States.

8. On November 28, 2012, Theresa Faga Jang was a U.S. Department of Homeland Security Immigration and Customs Enforcement employee at all times relevant to this Complaint, was employed by and/or acting on behalf of the Defendant in the course and scope of his employment. The Defendant is responsible for the negligent acts of its employees and agents under respondeat

1 superior.

2 9. Jurisdiction is proper under 28 U.S.C. §1346 (b)(1).

3 10. Venue is proper under 28 U.S.C. §1402 (b) in that all, or a substantial part of the acts and
4 omissions forming the basis of these claims occurred in the Northern District of California.

5 **First Cause of Action**

6 **Negligence**

7 11. Plaintiffs reallege and reincorporate each and every allegation above as if fully set forth
8 herein.

9 12. On or about November 28, 2012, Plaintiff Wendy Stevens was the licensed driver and
10 owner of an insured 2011 Ford Focus, with California license plate number 6MYL339. Plaintiff
11 K.S., then 11 years old, was seated in the front-right passenger seat. Plaintiff Wendy Stevens was
12 driving northbound on Brentwood Boulevard approaching its intersection with Balfour Road.

13 13. On or about November 28, 2012, Theresa Faga Jang was the operator of a 2007 Ford
14 Expedition, with California license plate number 6VLM907, owned by the U.S. Department of
15 Homeland Security Immigration and Customs Enforcement (“DHS/ICE”). Ms. Jang was driving
16 said vehicle northbound on Brentwood Boulevard when she made an unsafe lane change in violation
17 of California Vehicle Code Section 21658(a).

18 14. Ms. Jang was an employee of U.S. Department of Homeland Security Immigration and
19 Customs Enforcement, and was operating her vehicle in the regular course and scope of his
20 employment with DHS/ICE.

21 15. The Ford Expedition owned by Defendant U.S. Department of Homeland Security
22 Immigration and Customs Enforcement and operated by its employee, Theresa Faga Jang,
23 negligently collided with the side of Plaintiff Wendy Stevens’ vehicle on said date.

24 16. Defendant U.S. Department of Homeland Security Immigration and Customs
25 Enforcement was careless and negligent in the ownership and operation of its motor vehicle, which
26 caused Plaintiffs to suffer sever personal injuries.

27 17. As a direct and proximate result of said collision, Plaintiffs were caused to sustain
28 severe painful bodily injuries. Plaintiffs have suffered, and continue to suffer, serious pain of a

permanent nature.

18. Plaintiffs have undergone extensive medical treatment and required significant physical therapy and rehabilitation as a result of the injuries sustained in the subject collision. Plaintiffs have incurred medical expenses and will continue to incur expenses for additional medical treatment and care related to their injuries in the future.

19. As a direct and proximate result of the physical injuries sustained by Plaintiff Wendy Stevens in the collision, she has been incapacitated from her usual employment and other gainful activities, resulting in a loss of income and has sustained disabilities that will incapacitate her and cause her pain and suffering in the future and will result in further loss of income.

Prayer for Relief

WHEREFORE, Plaintiffs demand upon Defendants:

- a. actual, compensatory and statutory damages;
 - b. post-judgment interest as allowed by law;
 - c. an award of attorneys' fees as allowed by law;
 - d. an award of taxable costs; and
 - e. any and all such further relief as this Court deems just and proper.

DATED: September 13, 2017

MASTRANGELO LAW OFFICES
A Professional Corporation

By:

EDWARD M. MASTRANGELO, ESQ.

Attorneys for Plaintiffs

WENDY STEVENS, individually and as
Guardian ad Litem for K.S., a minor

EXHIBIT 1

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

State Farm, P.O. Box 52289, Phoenix, AZ 85072-2289, Claim Number 05-222C-598, Policy Number 2111703-F1005

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

I have filed a claim for property damages and medical payments coverage. There is a deductible.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

State Farm has paid some medical bills and other payments are pending reimbursement.

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

State Farm, P. O. Box 52289, Phoenix, AZ 85072-2289, Claim Number 05-222C-598, Policy Number 2111703-F1005

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word **NONE** where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

State Farm, P.O. Box 52289, Phoenix, AZ 85072-2289, Claim Number 05-222C-598, Policy Number 2111703-F1005

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

State Farm has paid some medical bills and other payments are pending reimbursement.

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

State Farm, P. O. Box 52289, Phoenix, AZ 85072-2289, Claim Number 05-222C-598, Policy Number 2111703-F1005

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS AFTER THE CLAIM ACCRUES**.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.



Date: November 12, 2014

Joyce Lahti:

The following is in response to your November 11, 2014 request for delivery information on your Priority Mail Express® item number EI324262905US. The delivery record shows that this item was delivered on November 12, 2014 at 10:35 am in LAGUNA NIGUEL, CA 92607 to V SEMEGI. There is no delivery signature on file for this item.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service

EXHIBIT 2

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
Immigration and Customs Enforcement
500 12th Street, SW, Mailstop 5900
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

March 31, 2017

Edward M. Mastrangelo
Mastrangelo Law Offices
Two Theatre Square
Suite 234
Orinda, CA 94563

Re: Federal Tort Claim of Wendy Stevens against the Department of Homeland Security

Dear Mr. Mastrangelo:

This correspondence is in reference to the receipt of the Standard Form 95 (SF 95), Claim for Damage, Injury or Death Claim Form, dated October 31, 2014, referring to the motor vehicle accident that occurred on November 28, 2012.

Any recovery under the Federal Tort Claims Act (FTCA) must be predicated upon a showing of a negligent or wrongful act or omission of a federal government employee acting within the scope of his/her employment. 28 U.S.C. § 1346(b).

After evaluating your claim our office has determined that your administrative claim is denied. If you are dissatisfied with this determination, you may file suit in an appropriate United States District Court not later than six months after the date of mailing of this notification of denial. 28 U.S.C. § 2401(b).

Very truly yours,

David L. Meek
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor

202-732-5389

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
Immigration and Customs Enforcement
500 12th Street, SW, Mailstop 5900
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

March 31, 2017

Edward M. Mastrangelo
Mastrangelo Law Offices
Two Theatre Square
Suite 234
Orinda, CA 94563

Re: Federal Tort Claim of K [REDACTED] S [REDACTED] against the Department of Homeland Security

Dear Mr. Mastrangelo:

This correspondence is in reference to the receipt of the Standard Form 95 (SF 95), Claim for Damage, Injury or Death Claim Form, dated October 31, 2014, referring to the motor vehicle accident that occurred on November 28, 2012.

Any recovery under the Federal Tort Claims Act (FTCA) must be predicated upon a showing of a negligent or wrongful act or omission of a federal government employee acting within the scope of his/her employment. 28 U.S.C. § 1346(b).

After evaluating your claim our office has determined that your administrative claim is denied. If you are dissatisfied with this determination, you may file suit in an appropriate United States District Court not later than six months after the date of mailing of this notification of denial. 28 U.S.C. § 2401(b).

Very truly yours,

David L. Meek
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor

CERTIFIED MAIL
RETURN RECEIPT REQUESTED